

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0526**

State of Minnesota,
Respondent,

vs.

Matthew Christopher Kurtenbach,
Appellant.

**Filed September 20, 2021
Affirmed
Larkin, Judge**

Yellow Medicine County District Court
File No. 87-CR-19-239

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Keith R. Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's refusal to award all of the custody credit that he requested at his sentencing for a controlled-substance offense. We affirm.

FACTS

In 2018, a federal district court sentenced appellant Matthew Christopher Kurtenbach to 36 months of supervised release for a controlled-substance offense. In April 2019, law enforcement in Yellow Medicine County, Minnesota, arrested Kurtenbach after finding methamphetamine in a vehicle he was driving. Respondent State of Minnesota charged Kurtenbach with one count each of fourth- and fifth-degree controlled-substance possession, and one count of driving while impaired.

Following his arrest and brief detention, Kurtenbach was released from custody in Yellow Medicine County. On May 9, 2019, he was taken into federal custody on allegations that he violated his federal supervised release. On August 14, 2019, he admitted that he had violated his federal release conditions by ingesting a controlled substance. The federal district court revoked Kurtenbach's supervised release and sentenced him to eight months in the custody of the United States Bureau of Prisons. Kurtenbach was thereafter transferred to county jails in Minnesota, which had contracted with federal authorities to house him during his federal sentence.

In August 2020, Kurtenbach pleaded guilty to the fifth-degree controlled-substance crime in his Yellow Medicine County case, and the state dismissed the remaining charges. Prior to sentencing in that case, Kurtenbach was arrested in Washington County,

Minnesota. On September 17, 2020, Governor Tim Walz ordered that Kurtenbach be extradited from Minnesota to South Dakota to face charges in that state. Kurtenbach was extradited to South Dakota on September 29.

At sentencing in his Yellow Medicine County case, Kurtenbach requested 434 days of custody credit, arguing that he had been in “continuous custody” from May 9, 2019, until January 3, 2020, and that “[o]ver four months of that time was spent in county jails within Minnesota that had contracts to house federal inmates.” The district court sentenced Kurtenbach to 21 months in prison with credit for 65 days served. Kurtenbach appeals, assigning error to the district court’s custody-credit determination.

DECISION

A district court’s decision to award custody credit involves “a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019) (quotation omitted). We review a district court’s factual findings for clear error and its legal determinations de novo. *Id.*

A defendant bears the burden of establishing that he is entitled to custody credit. *Id.* A defendant is entitled to credit for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B); *Roy*, 928 N.W.2d at 345. If an offender satisfies his burden, the district court must award custody credit; the decision is not discretionary. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012).

When determining whether to award custody credit, Minnesota courts distinguish between custody within Minnesota (intra-jurisdictional) and custody outside of Minnesota's jurisdiction (inter-jurisdictional). *Roy*, 928 N.W.2d at 345. When determining credit for custody within Minnesota, courts seek to avoid "de facto conversion of a concurrent sentence into a consecutive sentence; indigent persons serving effectively longer sentences as a result of their inability to post bail; irrelevant factors affecting the length of incarceration; and manipulation of charging dates by the prosecutor so as to increase the length of incarceration." *Id.* (quotation omitted). When determining credit for custody outside of Minnesota's jurisdiction, we "apply a different test" and examine whether the defendant's Minnesota offense is "the sole reason" for the inter-jurisdictional custody. *Id.* (quotation omitted).

Kurtenbach raises five arguments, and two pro se arguments, in support of his request for additional custody credit. Several of his arguments challenge the law as it currently stands. That is, Kurtenbach challenges the established distinction between intra-jurisdictional and inter-jurisdictional custody and the separate tests applicable to each. But as recently as 2019, the supreme court recognized the continuing distinction between, and separate tests for, the two types of custody. *See id.* This court is bound by Minnesota Supreme Court precedent. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010). We are therefore obligated to follow the law as it currently exists, to differentiate between the two types of custody, and to apply the standard applicable to each. The federal custody at issue here constitutes inter-jurisdictional custody. Thus, for Kurtenbach to receive additional credit for that custody, his Yellow Medicine County offense must have been

“the sole reason” for that interjurisdictional custody. *See Roy*, 928 N.W.2d at 344-45 (determining that the Red Lake Nation was outside of Minnesota’s jurisdiction). With that rule in mind, we address Kurtenbach’s arguments.

I.

Kurtenbach contends that he is entitled to additional custody credit because “there is evidence in the record, never refuted, that for a period of time [he] was ineligible to be released from federal custody” to a halfway house “solely because of the pending Yellow Medicine County charges.” He therefore argues that those charges were the sole reason for his interjurisdictional custody. He “requests a remand back to the district court for a hearing to determine when he would otherwise have been eligible for release to a federal halfway house.”

Kurtenbach testified at an omnibus hearing that his Yellow Medicine County charges “likely” affected his “placement” while being held in federal custody for the supervised-release violation. He testified that he “would have been eligible for what they call residential reentry centers which is like halfway houses,” but he was deemed “too much of an escape risk” because of his pending felony. He filed an affidavit with similar assertions.

Kurtenbach raised that argument in support of his assertion that the state violated the Interstate Agreement on Detainers Act and his right to a speedy trial. He did not raise it as support for his custody-credit claim. Thus, the district court did not specifically address it in determining custody credit. Appellate courts “generally will not decide issues

which were not raised before the district court.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

But even if Kurtenbach had properly raised his argument, he failed to meet his burden of production. See *Roy*, 928 N.W.2d at 344 (discussing burden). Although Kurtenbach presented some evidence that the Minnesota charge at issue may have affected his custody status, that evidence was inconclusive. This is not a case, like *State v. Mattson*, in which it was “beyond question that the Minnesota offense was the sole reason for defendant’s Wisconsin incarceration.” 376 N.W.2d 413, 416 (Minn. 1985). Indeed, Kurtenbach qualified his omnibus testimony, stating that his placement was “likely” affected by the Minnesota charge. The fact that Kurtenbach seeks a remand to determine when he would have been eligible for release also suggests that he did not meet his burden. Moreover, the record indicates that Kurtenbach was subject to additional pending state felony charges while he was in federal custody.

In sum, assuming that Kurtenbach’s argument is properly before this court, he has not established that his Yellow Medicine County charge was the sole reason he was not released from federal custody to a halfway house. He therefore is not entitled to additional custody credit.

II.

Kurtenbach contends that under the plain language of Minn. R. Crim. P. 27.03, subd. 4(B), he is entitled to custody credit for his time in federal custody because his Minnesota sentence and federal custody arose from the same “behavioral incident.” As support for that contention, Kurtenbach asks us to apply “[a] narrow reading” of caselaw discussing

the interjurisdictional sole-reason test and to bifurcate rule 27.03, subdivision 4(B), such that the sole-reason test is applicable to interjurisdictional custody based on an “offense,” but not interjurisdictional custody based on a “behavioral incident.” But there is tension between that approach and supreme court precedent, which governs our decision. *See Roy*, 928 N.W.2d at 345-46 (noting the applicability of rule 27.03 and applying the sole-reason test); *M.L.A.*, 785 N.W.2d at 767 (stating that this court is bound by supreme court precedent).

The record establishes that Kurtenbach admitted three federal supervised-release violations, and the remaining 15 allegations were dismissed. The record also establishes that those three admitted violations were that he “ingest[ed] a controlled substance” on three separate dates in April 2019, prior to his Yellow Medicine County offense. It is therefore clear that Kurtenbach’s federal custody did not occur *solely* because of his Yellow Medicine County conduct. Because Kurtenbach’s Yellow Medicine County conduct was not the sole reason for his federal custody, he is not entitled to additional custody credit.

III.

Kurtenbach contends that he should receive credit for time served in the Sherburne and Renville County jails because those facilities “are within the jurisdiction of Minnesota.” Essentially, he argues that because he was in federal custody in Minnesota jails, pursuant to a contract between the federal government and those state jails, we should treat that custody as intrajurisdictional custody because the facilities are located within the physical boundaries of Minnesota.

In *Roy*, the supreme court stated, “Although . . . the Red Lake Nation is within the borders of the state of Minnesota, it is an independent sovereign nation with jurisdiction over the members of its tribe.” 928 N.W.2d at 345. The supreme court relied on this reasoning in determining that the interjurisdictional rule applied. *Id.* Likewise, although Kurtenbach may have been held within Minnesota’s physical boundaries, he was in the custody and control of the federal government, a distinct sovereign entity, as found by the district court.¹

Because Kurtenbach’s federal detention in Minnesota jails, pursuant to a contract between the federal government and those state jails, constitutes interjurisdictional custody, we will not treat it as intrajurisdictional custody.

IV.

Kurtenbach contends that the governor’s decision to extradite him to South Dakota deprived him of custody credit he otherwise would have earned. He argues that if he had remained in Washington County instead of being extradited, “it is undisputed that he would have received that custody credit against his Yellow Medicine County sentence.”

Kurtenbach relies on two cases to support his argument. In *State v. Hadgu*, this court held that a defendant was entitled to custody credit for time spent in the custody of the United States Immigration and Naturalization Service (INS), reasoning that the defendant had posted bail, that the INS held the defendant after the state court conviction

¹ Indeed, the district court noted that it attempted to have Kurtenbach “brought across the street from the Renville County Jail to the Renville County Courthouse for a hearing . . . and Federal authorities refused.”

and before sentencing, and that the hold was in connection with the Minnesota offense. 681 N.W.2d 30, 31 (Minn. App. 2004), *rev. denied* (Minn. Sept. 21, 2004). We determined that the defendant's INS custody failed to satisfy the interjurisdictional standard because the custody served "the separate, non-penal purposes of the INS." *Id.* at 33. Nonetheless, we determined that the custody met the "in connection with" standard in rule 27.03, and we held that "this underlying test applies to INS custody situations." *Id.* We distinguished INS custody from other types of interjurisdictional custody, noting, "INS does not impose detention for criminal or punitive purposes, as do other jurisdictions holding Minnesota defendants on their own criminal charges." *Id.*

This case is distinguishable for two reasons. First, we are not dealing with INS nonpunitive detention; Kurtenbach was in federal custody for federal crimes. Second, unlike *Hadgu*, in which the defendant's INS custody was a direct result of his Minnesota conviction, Kurtenbach's extradition and interjurisdictional custody arose from his South Dakota crimes, and not his Yellow Medicine County offense.

Kurtenbach also points to the discretionary nature of the governor's decision and relies on *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008), for the proposition that "the decision to grant or deny jail credit should not turn on irrelevant factors or be subject to prosecutorial manipulation." But, in *Johnson*, the supreme court was addressing intrajurisdictional custody when it discussed the need to avoid irrelevant factors and prosecutorial manipulation. 744 N.W.2d at 379; *see also Roy*, 928 N.W.2d at 346 (declining to apply intrajurisdictional factors to an interjurisdictional case). Moreover, the issue in *Johnson* was whether a defendant is entitled to custody credit for time spent in a

secure treatment facility. 744 N.W.2d at 378. The supreme court ultimately held that the defendant was not entitled to credit, in part, because his civil commitment was “unrelated to the criminal charges for which he was sentenced.” *Id.* Likewise, Kurtenbach’s transfer to South Dakota was unrelated to his Yellow Medicine County charges.

In sum, Kurtenbach is not entitled to custody credit based on the governor’s decision to extradite him to South Dakota.

V.

Kurtenbach contends that the distinction between intrajurisdictional and interjurisdictional custody should be abandoned for lack of any rational justification. He cites the concurring opinion in *Roy*, in which Justice Thissen wrote that the distinction between the two types of custody “is unsupportable” and lacks a “principled reason.” 928 N.W.2d at 349 (Thissen, J., concurring). Kurtenbach asks this court to “review his jail credit request in light of Justice Thissen’s invitation to have the courts reexamine the viability of the intra/interstate rule under Minnesota law and the ludicrous rationale underlying this distinction.”

Any reexamination of supreme court precedent must occur in the supreme court. *See M.L.A.*, 785 N.W.2d at 767 (stating that this court is bound by supreme court precedent). The majority opinion in *Roy* clearly differentiated intrajurisdictional custody from interjurisdictional custody. *See* 928 N.W.2d at 345 (“Because the Red Lake Nation is a separate sovereign jurisdiction, the interjurisdictional rule applies.”). Moreover, the supreme court noted its previous refusal “to apply the factors from the intrajurisdictional custody credit test to a case involving interjurisdictional custody credit” and “decline[d] to

consider those factors” in *Roy*. *Id.* at 346. We therefore apply the distinction between the intrajurisdictional and interjurisdictional custody in this case. *See Maryland v. Wilson*, 519 U.S. 408, 412-13 (1997) (stating that concurring opinions are not binding).

VI.

Kurtenbach submitted a pro se supplemental brief. He contends that the denial of his requested custody credit violates his right to equal protection under the Fourteenth Amendment. He also contends that the governor’s extradition order violated the separation-of-powers doctrine. Generally, this court reviews constitutional issues, including questions of constitutional interpretation, de novo. *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007); *State v. Barker*, 705 N.W.2d 768, 771 (Minn. 2005).

The Equal Protection Clause of the United States Constitution mandates that similarly situated individuals be treated alike. *Scott v. Minneapolis Police Relief Ass’n*, 615 N.W.2d 66, 74 (Minn. 2000). “An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves.” *Peterson v. Minn. Dep’t of Lab. & Indus.*, 591 N.W.2d 76, 79 (Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. May 18, 1999). In determining whether two groups are similarly situated, the focus is on “whether they are alike in all relevant respects.” *State v. Cox*, 798 N.W.2d 517, 522 (Minn. 2011). Kurtenbach argues that when determining custody credit, it is unconstitutional to treat individuals in custody outside of Minnesota’s jurisdiction differently from those in custody within its jurisdiction.

In *State v. Roy*, the appellant argued to this court that she was denied equal protection based on race “because a non-Indian who committed the same crimes that she did on the Red Lake reservation, either individually or with [the] appellant, would have received jail credit for any related time that was served in a Minnesota county jail.” 920 N.W.2d 227, 231 (Minn. App. 2018), *aff’d*, 928 N.W.2d 341 (Minn. 2019). In determining that the appellant’s claim lacked merit, we reasoned that “Minnesota would have jurisdiction over the non-Indian who committed the crimes on the reservation, whereas the Red Lake tribe ha[d] jurisdiction over [the] appellant for the acts she committed on the reservation,” and that the appellant therefore was not “similarly situated to a non-Indian who commits a crime on the Red Lake reservation.” *Id.* at 231-32 (citation omitted).

In sum, jurisdiction is a relevant factor when determining if two groups are similarly situated for purposes of custody credit. *See also Roy*, 928 N.W.2d at 345 (stating that a “threshold question” was whether the Red Lake Nation is within the jurisdiction of the State of Minnesota). Because individuals who are subject to distinct jurisdictions are not similarly situated in all relevant respects, Kurtenbach’s equal-protection challenge fails.

Kurtenbach next argues that the denial of custody credit for his time spent in custody in South Dakota following the governor’s extradition order violates the separation-of-powers doctrine because it “effectively allows the executive branch to determine how much credit [he] will receive against his sentence,” which “invade[s] the province of the judicial branch.”

The legislature has granted the governor discretion to extradite a person with criminal matters pending in Minnesota to another state to face charges in that state. Under Minn. Stat. § 629.19 (2020):

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor either may surrender the person on demand of the executive authority of another state or hold the person until the person has been tried and discharged or convicted and punished in this state.

Kurtenbach challenges the constitutionality of section 629.19. “We review the constitutionality of a statute de novo.” *Carlton v. State*, 816 N.W.2d 590, 611 (Minn. 2012). “Statutes are presumed to be constitutional, and we will find a statute unconstitutional only when absolutely necessary.” *Id.* (quotation omitted). “The party challenging a statute must demonstrate that the statute is unconstitutional beyond a reasonable doubt.” *Id.* (quotation omitted).

We have considered Kurtenbach’s separation-of-powers argument and conclude that he has not met his burden to prove that the governor’s legislatively authorized discretion to extradite violates the separation-of-powers doctrine. *See Koch v. O’Brien*, 131 A.2d 63, 64-65 (N.H. 1957) (concluding that executive discretion under statute to grant or refuse rendition of a fugitive did not violate separation-of-powers provision of state constitution); *see also Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se arguments without detailing consideration of each argument).

Affirmed.